

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 1:04cr385
)	
ALI AL-TIMIMI)	

NOTICE OF RELEVANT APPELLATE ACTIVITY

The government wishes to inform the Court that the Fourth Circuit has announced that it will soon examine the post-*Dimaya* viability of § 924(c)(3)(B).

In October 2016, the Fourth Circuit heard oral argument in *United States v. Simms*, No. 15-4640, a case on direct appeal arising from the Eastern District of North Carolina. The defendant there argued both that Hobbs Act robbery is not a crime of violence under § 924(c)(3)(A), and that § 924(c)(3)(B) is unconstitutionally vague after *Johnson v. United States*, 135 S. Ct. 2551 (2015).

On June 15, 2018, the Fourth Circuit issued an order announcing that it would re-hear the *Simms* appeal *en banc*. The Fourth Circuit directed the parties to file supplemental briefing on the constitutionality of § 924(c)(3)(B) after *Dimaya*, and whether it is possible to read Section 924(c)(3)(B) using an offense-specific, non-categorical approach. *See Orders, United States v. Simms*, No. 15-4640 (4th Cir. June 15, 2018), ECF Nos. 52–53.¹

¹ Copies of these orders are attached hereto as Government Exhibits 1 and 2.

The Fourth Circuit has tentatively calendared oral argument in *Simms* for its session between September 25 and 28, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of June 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all attorneys of record.

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